REMARKS

In the Final Office Action mailed on June 2, 2005, the Examiner reviewed claims 1-20. Claims 1-2 and 19-20 stand rejected under 35 U.S.C. §102(b). Claims 3-20 are rejected under §103(a). For the reasons stated below, Applicant requests reconsideration of the Examiner's rejections of these claims.

The Examiner rejected claims 1-2 and 19-20 under 35 U.S.C. §102(b) as being anticipated by *Everingham* (US 5,828,759). Claim 1 requires a rigid support positioning a microphone in a sound field of the speaker which is propagated along an axis. The Examiner contends that *Everingham* shows this feature, noting that microphone 42 of *Everingham* is in the plane of the front of the speaker cone 32. [Final Office Action (6-2-05), p.2]. However, *Everingham* indicates clearly that microphone 42 generates an electrical signal corresponding to engine noise, not to speaker noise. [*Everingham*, col. 2, ll. 65-67]. This signal is then used to develop a noise canceling sound for speaker 30 to generate, which is out of phase with the engine noise. [*Everingham*, col. 3, ll. 3-9]. Such a disclosure not only fails to mention that microphone 42 is in the sound field of speaker 30, the foregoing demonstrates that the microphone is positioned in the path of engine noise but not in the path of noise cancellation. Indeed, if microphone 42 were placed in front of speaker rather than in the path of sound from engine noise, Applicant submits that noise cancellation would suffer as microphone 42 would pick up noise from speaker 30 more than engine noise.

Furthermore, although not the same reference as *Everingham*, figure 3 of *McLean* (US 6,084,971) shows that positioning a microphone in the manner of *Everingham* would

succeed in picking up sound field B, i.e., noise from engine, rather than from sound field C, noise from speaker. Applicant submits that *Everingham* does not show a microphone in the sound field of the speaker. For this reason, independent claim 1 and its dependents, claims 2-9, stand in condition for allowance.

The Examiner further rejected independent claim 19 and its dependent as being anticipated by *Everingham*. Claim 19 requires in pertinent part, "a rigid support spaced a predetermined distance from said face wherein said predetermined distance relates to the location of the sound field emitted by said speaker." Again, as explained above, the microphone of *Everingham* is not located based on the location of the sound field emitted by the speaker but is instead located based on the south field created by engine noise emanating through the space between the speaker housing and the walls of the air duct housing 10. Therefore, independent claim 19 and its dependent, claim 20, stand in condition for allowance.

Next, the Examiner seeks to reject claims 3-20 pursuant to 35 U.S.C. §103(a) as being unpatentable over *Everingham* in view of *McLean*. However, this combination is improper for a number of reasons. First, *McLean* teaches away from the use of a rigid support positioned above speaker 32 because of the necessity of having the support be "acoustically transparent to the sound field broadcast by the loud speaker 32." [*McLean*, col. 3, ll. 2-4]. Hence, open cell foam is used rather than a rigid support. Certainly, there is no indication that the support of *Everingham* would meet this requirement.

In addition, the microphone of *Everingham* is positioned to receive noise from the engine, not a speaker. Accordingly, *Everingham* teaches away from its combination with

McLean, which requires its microphone to pick up noise from speaker. Therefore, the combination is improper. For this reason, claims 3-20 stand in condition for allowance.

Claim 5 depends upon claim 1 and further requires, "a screen spanning at least a portion of said mouth ." The mouth is of an air induction body. *Everingham* teaches the placement of a protective screen for an acoustic enclosure 14 for speaker 16. [*Shipps, et al.*, col. 5, ll. 40-43, col. 7, ll. 56-61]. There is no teaching in the combination of references of the placing of a screen over the mouth of an air induction body as required by claim 1. Therefore, claim 5 is separately allowable. In addition, there is also no motivation or suggestion to combine the *Everingham* reference with *Shipps, et al.* *Shipps, et al.* teaches protecting the speaker. There is no need for such protection in the invention of *Everingham*, which includes transition section 16 that is already connected to such air induction system components as an air cleaner. [*Everingham*, col. 2, ll. 31-32]. Therefore, a motivation and a suggestion to combine is lacking and claim 5 is separately allowable for this additional reason.

The Examiner further rejected claims 9, 12, 14 and 18 based on the combination of references of *Everingham* in view of *McLean* and further in view of *Shipps, et al.* As noted above, the motivation for combining these references is insufficient. Therefore, these claims are allowable.

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For the foregoing reasons, Applicant requests allowance of claims 1-20.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE

I hereby certify that this Response, relative to Application No. 09/847,245, is being facsimile transmitted to the Patent and Trademark Office (Fax No. 571-273-8300) on July 25, 2005.

Theresa M. Palmateer

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